

STUART WAYNE TOMPKINS,  
Plaintiff,  
v.  
DEP'T OF CORRECTIONS, et al.,  
Defendants.

**THIS MATTER** comes before the Court on remand from the United States Court of Appeals for the Fourth Circuit for the limited purpose of determining whether Plaintiff can satisfy the requirements for reopening the appeal period set forth in Rule 4(a)(6) of the Federal Rules of Appellate Procedure.

Rule 4(a)(6) permits a district court, in certain circumstances, to reopen the time to file an appeal. That is, if a motion is filed within 180 days after the judgment is entered or within fourteen days<sup>1</sup> after the moving party receives notice of the entry, whichever is earlier, and the district court finds that the moving party was entitled to notice of the entry of judgment but did not receive it within 21 days after entry, and the court finds no party would be prejudiced, a district court may reopen the time to file an appeal. Fed R. App. P. 4(a)(6).

In the instant case, Plaintiff alleges in his Notice of Appeal that despite the fact that

<sup>1</sup> The Court notes that effective December 1, 2009, Rule 4(a)(6) increased the time period for filing a motion to reopen the time to appeal after receiving notice from seven days to fourteen days. Petitioner satisfies either time period.

Judgment was entered on April 14, 2009, he did not receive a copy of the Judgment until June 21, 2009. Plaintiff alleges that he then placed a Notice of Appeal in the prison mailing system on June 23, 2009. The Court received Plaintiff's Notice of Appeal on June 29, 2009.

Petitioner's allegations satisfy the prerequisites for reopening his time to appeal. That is, his motion was filed less than 180 days from when judgment was entered in his case and Plaintiff filed his Notice of Appeal within the requisite time period of receiving notice of the Judgment. In addition, Petitioner did not receive a copy of the Judgment within 21 days of its entry. Finally, it does not appear to the Court that Defendants would be particularly prejudiced other than the fact that they will now have to defend the appeal. As such, this Court concludes that Plaintiff has satisfied the requirements for reopening the appeal period as set forth in Rule 4(a)(6).

**THEREFORE, IT IS HEREBY ORDERED** that the Clerk is directed to notify the Fourth Circuit of this Court's findings following remand and to return the supplemented record for further proceedings.

Signed: March 22, 2010

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

